

REMARKS

Claims 10, 11, 13, and 16-19 stand newly rejected under 35 USC 103 as unpatentable over Firewalls Complete in view of Official Notice.

Response to Examiner's Note

Examiner states "The applicant is **effectively** claiming a system where a mobile device with a firewall communicates wirelessly with another computing element that also has a firewall." (Office Communication of July 20, 2009, Paragraph 5.) Thus, it appears that Examiner has attempted to reduce the claims to the "gist" of the invention. Applicant notes that "Distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole." *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984), and is impermissible per MPEP 2141.02(II).

Applicant has reviewed the current and prior office communications but has not been able to locate the official notice that "wireless transmission between computing entities is well known." (Office Communication of July 20, 2009, Paragraph 4.) Applicant notes "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." MPEP 2144.03(A).

Response to Rejections Under Section 103:

Applicant respectfully directs Examiner to MPEP 2144.03(E), which states the following about facts officially noticed:

Furthermore, as noted by the court in *Ahlert*, any facts so noticed should be of notorious character and serve **only** to "**fill in the gaps**" in an **insubstantial manner** which might exist in the evidentiary showing made by the examiner to **support a particular ground for rejection**.

Applicant notes that Examiner has used Official Notice to teach the following claim 10 limitation:

a radio link for wireless data transmission between the mobile operating and monitoring device and an automation component with a radio access point, the radio link comprising a first data stream wherein data is transmitted from the

automation component with a radio access point to the mobile operating and monitoring device, and a second data stream wherein data is transmitted from the mobile operating and monitoring device to the automation component with the radio access point.

This is obviously a significant limitation of Applicant's claim 10. Thus, Examiner has used Official Notice as principal evidence which has served as a substantial basis for the rejection, which is improper use of Official Notice. Applicant respectfully requests the 35 USC 103 rejection of claim 10, and claims 11, 13, and 16-19, which depend from and include all the limitations of claim 10, based on Firewalls and Official Notice, be withdrawn.

Applicant's prior claim 10 language stated "wherein the first firewall secures transmissions on the first data stream **but not** on the second data stream, and the second firewall secures transmissions on the second data stream **but not** on the first data stream." The term "secure" may become unclear when a firewall is configured to be "transparent" to a data stream, because the firewall sees the data stream, but does not act. Hence, Applicant has amended claim 10 to claim "wherein the first firewall secures transmissions on the first data stream but the second data stream **bypasses** the first firewall, and the second firewall secures transmissions on the second data stream but the first data stream **bypasses** the second firewall." This is intended to clarify the invention, and distinguish it from the prior art.

Examiner asserts that Firewalls in view of Official Notice teaches this limitation, stating "Firewalls, pg. 418, 578-579, firewalls secure ingoing **and outbound** connections." (Office Communication of July 20, 2009, Paragraph 7.) The art itself states "inbound **and** outbound access can be configured to be completely transparent..." (Firewalls, page 418, first paragraph). It is clear that a firewall cannot be made transparent to a data stream that bypasses the firewall; a firewall can only be made transparent to a data stream that traverses it. Thus, Firewall teaches a firewall where both data streams traverse it, which is different that what Applicant claims. Applicant respectfully requests the 35 USC 103 rejection of claim 10, and claims 11, 13, and 16-19, which depend from and include all the limitations of claim 10, based on Firewalls and Official Notice, be withdrawn.

Examiner states that claim 11 is taught because “firewalls secure ingoing and outbound connections.” (Office Communication of July 20, 2009, Page 5). Applicant can find no teaching or suggestion in Firewall that teaches Applicant’s claim language “wherein the security procedures loaded and active in the first and second firewalls have the same effects.” The Firewalls reference appears to be silent on the security procedures loaded and active in the firewall. In this case the limitation is not inherent in the reference either, because the reference is free to have multiple security procedures, thus foreclosing any inherency assertions. If a reference is silent regarding a limitation that is not inherently required in the reference, it does not teach or suggest the limitation. Applicant respectfully requests the 35 USC 103 rejection of claim 11, based on Firewalls and Official Notice, be withdrawn.

Regarding claims 13 and 19, Applicant acknowledges that the use of firewalls in encapsulated mobile devices is known, but asserts that official notice does not teach Applicant’s claim 13 limitation, because Applicant does not claim the type of firewall taught in Firewall, but Applicant claims the type of firewall claimed in claim 10. Applicant respectfully requests the 35 USC 103 rejection of claims 13 and 19, based on Firewalls and Official Notice, be withdrawn.

Regarding claim 16, Applicant acknowledges that the use of field bus is known, but asserts that official notice does not teach Applicant’s claim 16 limitation, because Applicant does not claim the type of firewall claimed in claim 10. Applicant respectfully requests the 35 USC 103 rejection of claim 16, based on Firewalls and Official Notice, be withdrawn.

Regarding claims 17 and 18, Applicant notes that the “radius server” of claim 17, and the “radius server connected to a field bus” of claim 18 are not “only found in the nonfunctional descriptive material” as asserted. This is evident because the words describe physical devices, and do not describe a function. These components are structural limitations present in the claims that cannot be disregarded by Examiner. Per MPEP 2143.03, “**All Claim Limitations Must Be Considered.**” Applicant respectfully requests the 35 USC 103 rejection of claims 17 and 18, based on Firewalls and Official Notice, be withdrawn.

Conclusion

Applicants respectfully request that the Examiner reconsider the rejections and timely pass the application to allowance. Please grant any extensions of time required to enter this paper. The commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including fees for additional claims and terminal disclaimer fee, or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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